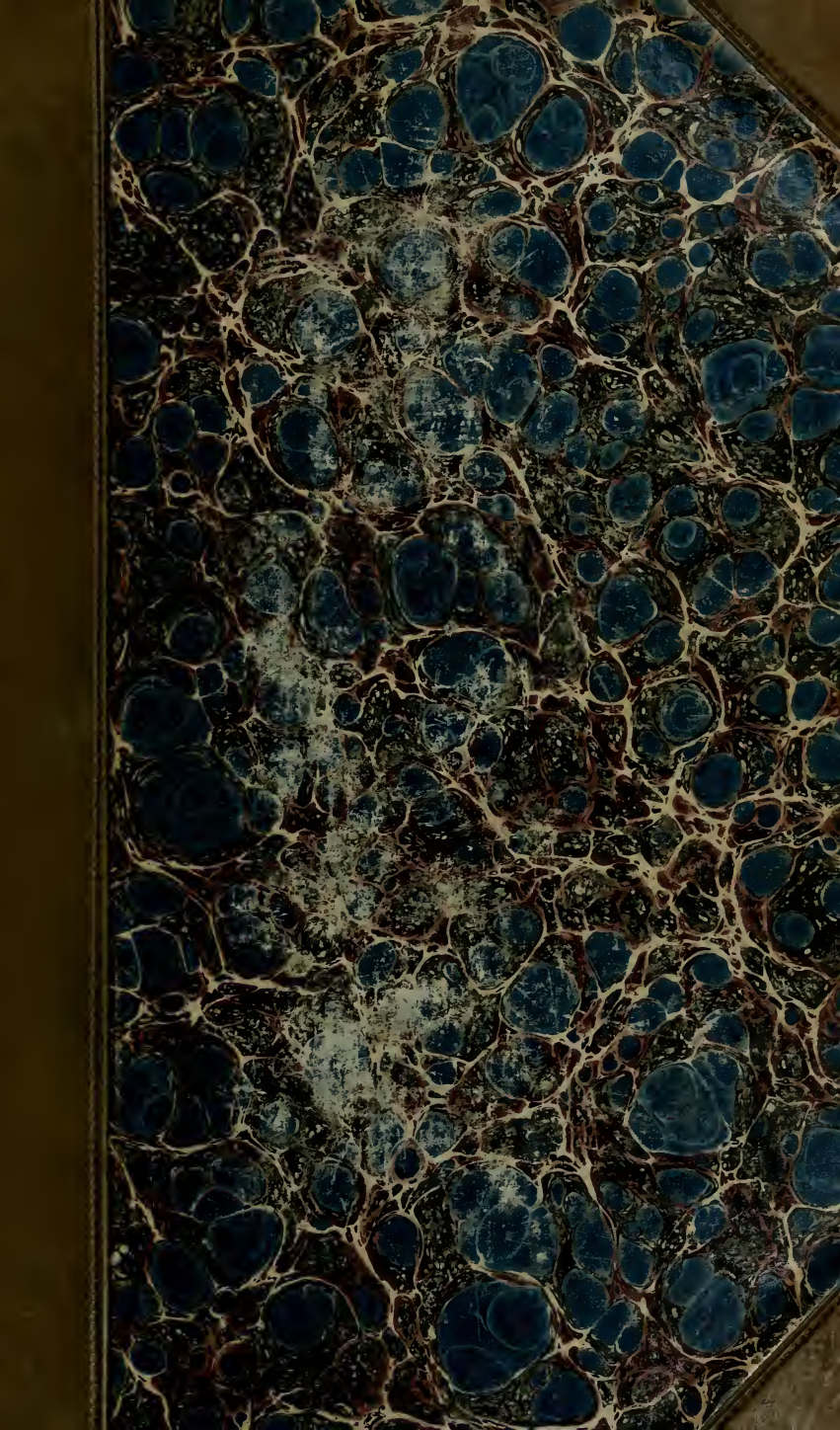






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ON THE
DISPOSITION OF PROPERTY

TO

PUBLIC USES.

BY

ARTHUR HOBHOUSE, Q.C.,

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and of the Society of Arts, Monday, July 5th, 1869.)*

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ON THE LIMITATIONS WHICH SHOULD BE PLACED ON DISPOSITIONS OF PROPERTY TO PUBLIC USES.

It has occurred to me to speak twice in public on this dry subject, and I shall make no apology for briefly recapitulating what has been said before, because it forms a necessary introduction to that which I have now to say.

The first address * dealt principally with the Past, and was mainly an historical answer to the question,—“How did we arrive at our present standpoint?” The second † dealt principally with the Present, and aimed at answering the question,—“What is our present standpoint?” Before I sit down to-day, I shall attempt an answer to the much more difficult and conjectural question,—“At what ought we to aim for the Future?”

Indeed, each of these questions is inseparably bound up with the other two; nor have I done so idle a thing as to attempt the treatment of one without trenching on the others. The bearing of the Past cannot be traced without an exhibition of the Present and some forecast of the Future. The position of the Present cannot be explained without examining its two out-looks—the retrospect and the prospect. And to make plans for the Future without an accurate analysis of that which is, and at least some study of that which has been, is a rash proceeding likely to result in failure.

The first thing I endeavoured to show was, that whereas the English nation has been keenly alive to the mischiefs of perpetual settlements in other cases, and has, in ways more or less orderly, defeated them, it has, from a variety of causes, allowed to Founders of what are called Charities, in other words, to settlors of property to public uses, a power of posthumous disposition, unlimited in point of time, and almost unlimited in range of object. This power has, like other arbitrary and excessive powers, been used with little self-denial, little public

* “Lecture on Charitable Foundations, delivered at Sion College, 12th March, 1868.” Booth, 307, Regent Street.

† “On the Authority accorded to Founders of Endowments.” Read at a Meeting of the Association, on the 10th of May last.

spirit, and more especially with little wisdom. It has been used selfishly and blindly, according to the ordinary passions and capacities of ordinary men. Yet we have chosen to remain in bondage to the fetters which men no wiser nor better than ourselves, and long since dead, have forged for us. I have endeavoured to trace out the causes of this singular phenomenon; have combated what I think the unreasonable and superstitious regard for the commands of persons who have shown no claim to be regarded beyond their fellows; have denied the right (apart from positive law) of any human being whatever so to enforce his will on posterity; have contended that the positive law which does in this country allow such extravagant power should be altered, and that the management of property should be resumed by those who alone can either manage or enjoy it, viz., the existing generation of men; endeavouring to express my doctrines in this simple formula—that Property is not the Property of the Dead but of the Living.

My next proposition was, that we are making no substantial progress towards sounder views; and for the proof of this I relied principally on the evidence afforded by the various essays at legislation on this subject for some years past. One object in doing so was to controvert an opposite opinion expressed by Mr. Mill—an opinion which was calculated to stop all exertions in the direction of progress, and indeed to turn them backwards, as it appears to have done in his own case. Mr. Mill thinks that people at large are sufficiently convinced of the impolicy of perpetual settlements to public uses, and that now there is danger of their not allowing enough of posthumous power to rich people. I think that there is not the smallest symptom of any such danger, if danger it is to be called, and fear that we have made no appreciable advance towards shaking the absolute dominion of Founders.

Notwithstanding this, I have been urged to examine, and I now propose to examine, how far the existing powers of Founders ought to be curtailed. And in so doing, I will again deal with the doctrines advanced by Mr. Mill, in the paper to which I have already referred. I do so for two reasons. First, because those doctrines seem to me to contain much error; and error from a man of such mark, and on a subject too which hardly anybody has taken the pains to study, produces disastrous effects. I have already come across cases in which people who really shrink from and wish to suppress the whole discussion, are delighted to quote so great an authority in

favour of quiescence. Secondly, because arguments (I am not speaking of assertions) in favour of the authority of Founders are so scarce that it is refreshing to find one of substance enough to grapple with, and useful to know whither to direct one's force. First, I will perform the more pleasant task of noting the points of agreement. Mr. Mill allows that gifts to public uses which work a clear and positive public mischief ought at once to be interfered with, and he instances doles or distributions of direct alms. Again, he thinks that in all cases there ought to be some limit of time beyond which the Founder's intention should be wholly disregarded, or, in other words, when his ownership over the property should cease. In both these propositions, as far as they go, I heartily agree: merely observing that they have not yet found acceptance; that the evils arising from their non-recognition are very serious, the powers engaged in opposition to them very great, and that there is no chance of these or any other useful reforms being made acceptable to the nation at large, until they have learned to estimate the right of posthumous disposition more nearly at its true value.

But when we come to consider at what point of time the Founder's ownership shall cease, Mr. Mill propounds schemes which seem to me objectionable, and founds them on reasoning which is absolutely fatal to all effective reform on such a subject.

His first and most characteristic argument is, that variety, and not uniformity, is the thing most essential to human progress. Minorities, he says, ought to be protected. The experiments of individuals to promote the public good ought to be allowed; and to disallow them in the supposed interest of the public, is an offence against human liberty. And he inveighs against the intolerance of the majority respecting other people's disposal of "their property," of "money of their own," of "what is lawfully their own," after their deaths. Now, that the thoughts and speculations of adult reasonable beings should be left to play freely and without restraint, I agree. Their actions should be as free as is consistent with the avoidance of injury to their neighbours. To justify restraint of individual action on the ground of detriment to others, the detriment should be clear and indubitable; or, in legal language, the benefit of the doubt should always be given in favour of individual freedom. So much the perfect law of liberty requires, and so much is essential for the due progress of mankind. These principles demand that, in the expenditure

of money as in other things, adult reasonable beings should be left to act nearly as they please. While a man is alive, you have a tolerably sure guarantee that he will not, for any public object, expose himself to privations, to blame, to ridicule, to the chances of failure, or even undergo the exertions which any original or eccentric course of action involves, unless he has some strong enthusiasm or conviction that he is right. This guarantee might not work in all cases, but it would in so many that the others may be safely disregarded.

But when a man's deeds are to have no operation till he is dead, what security have we that he will be guided by any considerations of public spirit or benevolence; that he will feel the weight of responsibility; that his passions will be chastened by conscience, or his fancies corrected by sober reason and reflection?

I have intimated on previous occasions my deep distrust of *a priori* reasoning on practical subjects. Speculation and conjecture are doubtless essential to all discovery, but they should be carefully collated with facts, and if unverified are worth very little. To my mind the conjectural reasoning is against Mr. Mill's view. But I willingly turn from it to the teaching of experience. And it seems to me that if there were any truth in the notion that, in order to have useful experiments properly tried in matters of public interest, we ought to put it in the power of men to make posthumous dispositions for this purpose, our history, and especially our history of the last 250 years, would abound with instances of valuable discoveries being made by means of such dispositions. We should be able to point to institutions and arrangements of great and acknowledged value taking their origin in some bequest, and which, but for that bequest, could never have flourished. Where are they? I ask Mr. Mill and those who agree with him to point out one, and when I am told of it, I promise to examine it.

At present, though our law has favoured gifts to public uses beyond that of any other country, though the wealth of our testators has exceeded that of any other country, I have never come across a single case to support Mr. Mill's hypothesis, that the power of binding the public to accept property on a testator's own conditions, is of value in the discovery of new modes of benefiting the public.* But I have come across many, very

* In the course of the subsequent discussion Mr. Fitch stated that he had lately examined 120 Scholastic Foundations without finding anything original or valuable in any of them.

many, cases in which that power has visibly operated to demoralise the testator himself, and all whom his actions affect. After my accustomed method I will proceed to cite some.

The first case* is one of very blameworthy character, both as regards motives and results. I have, on a previous occasion, attempted to classify the motives of Founders, with a warning as to the difficulty of referring any act to a single motive. In this instance, however, the Founder appears to have been remarkably single-hearted. His motive was spite.

George Jarvis was a man of property in Herefordshire. The neighbours tell us that no charitable intentions entered his mind until he was displeased at the marriage of his only daughter, or at some incident therewith connected. He lived to see his daughter become a mother and a grandmother, but he nursed his resentment through all changes and chances of life. His grandson had to sell a settled family estate to pay off charges upon it. Jarvis was then heard to say that he could clear the young man's estate and make him all right, but he would not. He made a will, by which, with moderate exceptions, he disinherited all his issue, and gave his property (about 100,000*l.*) to trustees, bidding them apply the income to the poor of three specified parishes, in money, provisions, physic, or clothes. One Mr. Holford, a friend of his, to whom the design of this will became known, remonstrated with him, saying, "The infant children of your grandson cannot have obliged you;" but he was unrelenting. He died in 1793, without change of purpose.

The fruits of his act were, like its root, evil. The whole population of all classes in the three parishes was, by the census of 1801, under 900. To describe the state of things thus produced, I borrow the language of Mr. Hare, who officially inspected the place:—

"The distribution of 2,300*l.* a year in alms brought into the parishes, not labourers seeking employment where it was likely to be found, but persons naturally desirous of participation in gifts which could be obtained without labour. The landowners, or wealthy inhabitants, were not likely to make any provision for the residence of increased numbers, whose immigration they did not invite; but, as habitations were necessary, the cottages became more crowded; houses, not more than sufficient for one family, were divided into two

* This account of Jarvis's foundation is taken mainly from a letter written by Mr. Hare to the Bishop of Hereford, in the year 1856.

or more, and other dwellings were built, not the production of capital directed to the supply of a social necessity, or in situations adapted for the convenience of the employer and the employed, but built by the poor themselves, or those little above them, some on waste and others on remote spots, with regard to little else than mere shelter. I will not venture to repeat the traditions which are current of the evils which this state of things created; but the inhabitants of the country round these parishes, who remember their state some years ago, are uniform in their testimony of the demoralisation of which the poor were by this means made the victims. Their mode of existence is said in some respects to have resembled that alternation of want and repletion which is characteristic of the savage state. The absence of regular employment for so many persons often occasioned at times want and suffering, whilst the large quantities of food distributed at other times led to great excesses. No habits of care or providence taught them to husband that which it had cost them no labour to obtain; and where poverty was the title to participation, there was little encouragement to that steady industry which could alone avert it. Idleness, discontent, and improvidence were found to be the fruits of this ill-conceived and ill-judged gift, to which must be added an immorality of life, the results of which are yet distinctly felt."

I need add no more, except to say that this miserable state of things took place under a Chancery scheme settled by Lord Eldon in the year 1802, and was not altered till the year 1852, when an Act of Parliament was passed. This, by the way, is just fifty years, the minimum time for which Mr. Mill thinks that living men ought to submit to founders' experiments for the public good.* But with the subsequent history of the foundation, unsatisfactory enough, we have now nothing to do. Its origin and early history are a standing monument, though only one of many, warning us not to trust our happiness to the good feeling or the good sense of persons who know that they will be safe from the disasters their acts may cause.

I turn now to a very different kind of man, one who may be credited with a sincere wish to do well in the disposition of his property. George Abbott, Archbishop of Canterbury,

* It is true that the foundation in question was for doles, which Mr. Mill would proscribe. But in 1801 perhaps, most men thought almsgiving was necessarily good. Certainly great quantities of persons left money in this way, hoping to have it imputed to their credit in the great account. And after all, the remark would not touch the present question, which is, whether it can safely be permitted to men to play fantastic tricks at the expense of posterity alone.

was a man of learning and accomplishments, not unversed in state affairs, and of more than average worth and integrity. He was a native of Guildford, and desired to benefit the town he loved. It seems that at an earlier date manufactures had been carried on in Guildford, but that this trade had ebbed away from it. Abbott's notion was to restore the trade, and also to build an almshouse for the poor.

My principal reason for examining this case is, that it has been brought forward as an admirable specimen of Foundations, and as an example and reason why they should be more encouraged by the law than they are. The most eminent witness examined by the Parliamentary Committee, who reported on this subject in the year 1844, was the late Sir Francis Palgrave. His evidence is very voluminous, and full of learning. He is a warm advocate for eleemosynary foundations, and he selects Abbott's as worthy of especial eulogy. It is a "munificent foundation," a "great and good design," "ungrudging and unstinted bounty," and so forth. I take it, therefore, that in the opinion of a man having most extensive knowledge of such matters, and much interested in them, this is as favourable an example as he can adduce.

Some questions were put to Sir F. Palgrave, with a view to find out how much property the Archbishop actually parted with in his lifetime. They were not answered, and I do not propose to pursue them further here, for they relate to the motives of the Founder, and we may fairly in this instance assume them in his favour. The more important question as to the wisdom and success of his arrangements was not raised.

Now, Abbott died in the year 1633. He left one property for the purpose of setting up manufactures of stockings and other things, that the place might flourish as theretofore. Other property was left to endow the alms-houses, which he had built in his lifetime, for twelve men and eight women. In about twenty years' time* the Guildford people demanded relief, showing that manufactures of different kinds had been tried, had failed, and had "been found to be even prejudicial to the town." This was in the time of the Commonwealth, when foundations were dealt with somewhat more boldly than at present. A decree of the Lords Commissioners, made in the year 1656, put a stop to the manufactures, but, following the *cy-près* doctrine, and clinging to the notion of fostering

* Charity Commission Reports, vol. 31, p. 887.

trade, they could find no better use for the funds than a distribution among the poor honest tradesmen and housekeepers of the town who might want stocks. This led immediately to the practice of money-doles. In the year 1785 an Information was filed, stating "that the distribution of the money had been found to be of little use, and often to operate as an inducement to idleness and drunkenness." A fresh decree was made, leaving still a moiety for the doles, and devoting the other moiety to the establishment of five additional almshouses. This arrangement was, as may well be conceived, no great improvement. Another Chancery suit was set on foot, and in 1855 the court, happily finding the ground very much cleared by the decree of 1656, made over the whole fund to a middle school. So much for this honest man's attempt to bring back trade to Guildford. Two centuries of failure and degradation have resulted from it. What may yet result is hidden in the womb of the future. As for the almshouse, it would seem to be much like other institutions of the same kind—not worse than its neighbours, and not better. The almspeople were made a corporation, so that a number of old illiterate paupers became owners and managers of what was to them a large property. The mismanagement was great, and on this ground the corporation has recently been dissolved, and the management placed in other hands. I have not come across any proof that the town has derived any benefit whatever from the almshouse, and as, whenever similar cases are examined with a view to test their working, it is usually found that almshouses are no benefit but a burden to the places where they exist, so it may be at Guildford.

The inference I draw is, that even could we have honesty of purpose on the part of all Founders, we cannot trust their wisdom to make arrangements for the conduct of their neighbours' affairs.

But the great majority of Foundations occupy a middle space between the consciously bad and the consciously good motives. They proceed from a mixture of motives, and are characterized by a very small amount of thought for others. When thought is bestowed, it is generally for the founder's own self.

Take the following mixture of bitterness, vanity, and eccentricity, in one Thomas Nash:—

"I do also hereby give and bequeath to the mayor, senior alderman, and town-clerk of Bath, for the time being, the sum of 50*l.* per

annum, in trust, payable of the Bank Long Annuities, standing in my name at the Bank of England, for the use, benefit, and enjoyment, of the set of ringers belonging to Abbey Church, Bath, on condition of their ringing on the whole peal of bells, with clappers muffled, various solemn and doleful changes, allowing proper intervals for rest and refreshment, from eight o'clock in the morning until eight o'clock in the evening, on the 14 of May in every year, being the anniversary of my wedding-day; and also on every anniversary of the day of my decease to ring a grand bob major and merry mirthful peals, unmuffled, during the same space of time, and allowing the same intervals as before-mentioned, in joyful commemoration of my happy release from domestic tyranny and wretchedness. And for the full, strict, and due performance of such conditions, they, the said ringers, are to receive the said 50*l.* per annum, in two payments of 25*l.* each, on those respective days of my marriage and decease. And now that dear divine man—(to use Mrs. Nash's own words)—the Rev. P. B., may resume his amatory labours without enveloping himself in a sedan-chair for fear of detection."

This gentleman did not give much thought to the welfare of the ringers, who are the objects of what is conventionally called his "bounty," nor to those of society at large.

Take again such an instance as this. The Lord of the Manor of Barton founds a school for the poor of several parishes. There are to be forty children, all of whom are to be appointed by the lord of the manor. All the children are to be taught to read, but none are to be taught the dangerous arts of writing or arithmetic, except such as the lord of the manor shall think fit. I need hardly say that difficulties have arisen in the conduct of this school. Is this one of the experiments to which we ought to submit ourselves for 50 or 100 years? The foundation was in the year 1807.

Now, will any one say that the spite, the short-sightedness, the narrow spirit, the carelessness evinced by different classes of Founders, is deserving of our respect, or that it can benefit the public to accord to them even one year of absolute power over property which the course of nature has compelled them to relinquish? Those who contend for this are at least bound to show on what experience they found their opinion. For myself, I will venture here to repeat words that I have used before :*—

* Lecture on the "Characteristics of Charitable Foundations in England," p. 33.

"It may be that private endowments were useful in the times when they were first devised. Like monasteries and trade guilds, they may have been the hard shell protecting a kernel of great virtue, destined one day to germinate into life, and shatter its protector into fragments. It may be so, though except as to institutions for learning or religion, it is not easy to think that it was so. To me it seems that, in this matter of Charitable Foundations, we are reaping simply as we have sown. We have committed a vast power to fortuitous and irresponsible hands; and they have used it according to the measure of their goodness and their wisdom. It is difficult for the wisest and the most patriotic man to see clearly the needs of the age he lives in. We have said that any man, however selfish or stupid, may assume to foresee the needs of all future time. It is much to permit that any one should force his countrymen to take, on his own terms, wealth of which he denudes himself. We have said that he may force them so to take wealth of which he only deprives others. What wonder if there is poverty of result from acts, for the performance of which we require neither wisdom, nor public spirit, nor self-denial."

But Mr. Mill uses other arguments. He thinks that the right to impress on property trusts affecting the public stands on the same grounds with all other testamentary power. He says:—

"If it is right that people should be suffered to employ what is lawfully their own in acts of beneficence to individuals, taking effect after their death, why not to the public?"

Why, for two very plain reasons. First, because a man may very easily be, and usually is, wise enough and concerned enough in the result to choose his successors, but few are concerned enough in the result, and no one is wise enough to judge what may be the needs of society even a few years hence. And secondly, if a private person receives property coupled with injurious conditions, he may get rid of the property and the conditions together. But the public is the ultimate heir; it cannot renounce the gift; it is to be bound to accept it, conditions and all; for ever, according to our present law, and according to most opinions; for fifty or a hundred years according to Mr. Mill.

To show the singular tenacity of opinion on this point, I refer again to Sir F. Palgrave's evidence before the committee, merely remarking on the attitude of the mind which, knowing of the case mentioned in answer 176, could utter the answer 175:—

"174. Would you not leave a large power to some competent tribunal to alter the application of charities when the prescribed means are found to be comparatively inadequate to attain the end?—I would leave the matter, as it now is, to the Court of Chancery or to Parliament, between whom any particular evil would be redressed.

"175. Chairman.—In point of fact, are they cases which happen with sufficient frequency to make you think that a sufficient guarantee?—I think they are; I am not aware of any charity whatever subsisting for any purpose grossly inconvenient or improper.

"176. Mr. C. Buller.—Supposing, for instance, at the time the Manichæan doctrines were prevalent in England, and there had been an alarm in the mind of some pious person respecting the prevalency of these doctrines; suppose he had left a dozen preacherhips to preach against the Manichæan doctrines, would you perpetually devote these foundations to that purpose, which by this time would become so utterly useless; or would you give some competent tribunal a power of alteration for religious purposes with the application of these funds?—I should say that I would leave that to the discretion of the trustees and the preacher; without alluding to Manichæan doctrines in particular, he might preach against other errors sufficiently near these doctrines to satisfy his own conscience, and that of the trust. It is impossible to deal with extreme cases; when they do arise, the law and Parliament always deal with them. There is a case at Norwich, where there is a foundation for the Walloons; the minister preaches annually a sermon in Low Dutch, which nobody understands.

"177. Sir G. Grey.—Is that the condition?—Yes; the sermon is preached every year; it was for a long time preached by one who had had his education in Flanders; I believe the clergyman now learns a sermon by heart and preaches it.

"178. Mr. C. Buller.—Do not you think that went rather to a desecration than to any good religious object?—It may be so; I would not deal with it."

Of course, if a man is dealing with "what is lawfully his own," there is an end of the question. And this leads me to Mr. Mill's next argument. He says that to treat property given to public uses as given to the public, and for the public to insist that they understand their own affairs best, and will apply the property, not to what they see to be hurtful, but to something else, is an offence against property as well as liberty.* That it is an offence against that law of property

* I believe I am not misrepresenting the position, though abbreviation is necessary. In pp. 372-381 of his *Essay*, I understand Mr. Mill

which happens to exist in England we all know, for it is that law of which we are complaining. The expression must mean that it is an offence against what ought to be the law of property. It is no offence against the law of that large portion of the world which has adopted the Code Napoleon, nor against the law of Austria or of Prussia.* Other civilised countries have thought it proper that the public should have a voice in the matter of their own improvement, and not be improved after the fancy of any private person. And this law is not, like our law, an ancient result of a number of beliefs, feelings, and political needs, now long extinct, but the result of deliberate policy, and one of the later products of civilisation. Why, then, ought the law of property to give every rich man a definite term of years after his death in which he may, according to the extent of his riches, work his will upon the public? Why should Christopher Tancred arrange, for 100 years, that twelve human beings should be confined in what has been called "a hell upon earth" because he wishes his land to be kept together and called by his name? Why should honest Archbishop Abbott be allowed to inflict misery upon the town of Guildford for 100 years, because, in his blindness and ignorance of economical laws, he thinks he can bring back the trade of the place? Did Abbott or Tancred create the wealth they had in life? Because a man is fortunate enough to enjoy great possessions in his lifetime, is that any reason why he should be invested with extraordinary and unalterable legislative powers after his death? One man, say Mr. Mill, devotes himself to mental cultivation, to speculations on most important subjects, to efforts at redressing social wrongs ;

to contend that, except in cases of clear and positive public mischief, every man has a right to a term of years during which he may devote his property to experiments on the public welfare.

* See the evidence of Mr. Adolphus Bach, given before the Committee of 1844, pp. 95 *et seq.* "I have not myself any original acquaintance with the law of Austria or Prussia, and very little with the Code Napoleon; but it so happened that, when at the bar, I had to argue the case of Lord Henry Seymour's will, and to look into the French Law of Charitable Bequests for that purpose. That law affords striking evidence of the great superiority of the French law to our own in this respect. Under the same bequest 'to the hospitals of London and Paris,' the French enjoy their share without a word of dispute, while over the English share years of expensive litigation have taken place, and it is not yet ready for use. This is entirely owing to our superstition about the 'Founders' intentions.' The French take it as a gift to the public, and use it accordingly."

he obtains fame, esteem, influence, all the nobler objects of man's ambition; but there is one thing of which he does not get much, and that is money. Another man, say Mr. Thornton, devotes himself to the turning and making of money, and his industry and acuteness are rewarded with a great quantity of it. But what is there in this which shall induce us to say that the labourer in the field of wealth is, to the extent of his two or three millions, to become a legislator for us by laws unalterable for a century, while no such power can be exercised by the labourer in the field of intellect? No; the rich man may well be content with his own enjoyment of his riches, and his power of choosing a successor who may enjoy them in like manner; and if he chooses the public for his successor, let him do so; but then the public must be the owner of its own property, and not be treated as a child, unfit to judge what is for its own good, and to be placed under the dominion of trustees and guardians even for a term of years. To contend for the emancipation of the public from this tyranny may be wrong on other grounds; but to say that it is an infraction of the laws of liberty, or of property, is to take those names in vain.

I have now done with the arguments advanced by Mr. Mill, but I cannot leave the subject without a protest against the use of a sort of regulation-language, which one meets with far too often. To talk of the piety or benevolence of people who give property to public uses, is a misuse of language springing from confusion of ideas. As a matter of fact, I believe, as I have elsewhere said more at length, that donors to public uses are less under the guidance of reason and conscience, and more under the sway of the baser passions than other people. But, supposing it otherwise, what possible reason can there be for attributing to them higher motives than actuate those who leave their property to private persons? A man is quitting this world, and cannot carry his riches away with him; he must leave them for other, and what tittle of beneficence can there be in saying who that other shall be? Whether he gives it to A or B, and whether his donee represents public interests or private, his beneficence surely stands at the same level. He may perform this act, as he may perform any other, with or without good feeling and good sense, but how the choice of one heir instead of another enables us to judge of this, unless we know many other circumstances, it is hard to see. But test this language as we should test everything, by comparison with facts. There is something ghastly in the thought of Tancred's

beneficence. To talk of the beneficence of Jarvis seems like a bitter and hideous jest. A man cherishes his wrath, originally unrighteous, against those who are closest to him, for a long series of years; transmits it from the parent to the children unto the third generation; and adjusts his property for the very purpose of giving pain to some in a way which spreads ruin and corruption broadcast among others. And then, forsooth, we are to be told of his beneficence. I trust that when these matters have been more thought of, we shall hear no more of such misplaced encomiums.

Another reason sometimes assigned for giving an absolute term of years for the exercise of a testator's power, is the analogy afforded by the testamentary power over gifts to private persons. If, indeed, this is brought forward merely by way of analogy and illustration, the foregoing considerations are sufficient, though many more might be added* to indicate the difference between the two cases. But if urged, as it frequently is, by way of substantive argument, we are driven to consider the propriety of the existing law of posthumous disposition to private uses.† Time will not suffer me to enter into anything approaching a full discussion of this topic, which is hardly less complicated, and is of far more extensive social effect than the law affecting public uses. I can do little more than indicate the nature of the reasons which lead me to think that the dead have too much to say to all our arrangements.

I have elsewhere stated what the law of perpetuity is, and have briefly sketched its origin.‡ It was not the result of any

* As for instance that on which Turgot principally insists, the impossibility of finding trustees who will enter zealously into the founder's views; expenses of management; temptations to speculation; inevitable quarrels between the various claimants of a legal right to share in the property—all direct consequences of the Founder's continued ownership.

† A perpetuity is a perpetuity, whether the uses are public or private. This has always been sooner or later felt, though it is singular how separate the two classes have been kept. Legislation was aimed at gifts to religious bodies as early as Magna Charta, but secular corporations were not touched till the reign of Richard II. Licenses to make parks were subject to the same conditions as licenses to amortise land in 27 Edward I. Perpetual entails were not got rid of till the reign of Edward IV., and then by judicial process. But the dead hand was shaken off private property much more effectually than off public, though the efforts came later in our history.

‡ See Lecture, pp. 14 *et seq.*

material deliberation, neither did it drop from heaven. It was invented by a series of judges, and so grew up by force of custom, like some other of our institutions. The effect, as most of you will remember, is to allow the ownership of property to remain in suspense, in other words to belong to the settlor himself, for the lifetime of any number of living persons, and 21 years after the death of the survivor. It probably represented the prevailing views of the great landowners of the time, otherwise it would hardly have been promulgated, or, if promulgated, would have excited opposition. It ought not therefore much to surprise us if a law framed from two to three centuries ago to suit the people who had only recently been rid of perpetual entails, should be found now to be too restrictive of freedom. I, for one, think that it is so. In this case also I claim for each living generation the full dominion over the fruits of the earth, and the power of judging for itself what is most for its own good.

Now the effect of one law of perpetuity is this—that the settlor of property can take the dominion over it away from those whom he knows, to confer it on those whom he does not know, nay, on those who are unborn and may never come into existence. This power is very commonly exercised to its fullest extent, merely because it exists, and without the slightest reason beyond the pleasure of exercising power. A testator will not allow his son, though he may trust him and love him, to make arrangements for his own children at a time when he knows their number, their characters, or their needs, but insists on making those arrangements himself, some thirty or forty years beforehand, when nothing whatever is known of the circumstances to which they will apply. The result is that, among the richer classes of this country, a very large number of families have their property governed, not according to their own desires or necessities, but according to the guesses or the fancies of some one who died long ago, and who could not, even if he wished, make the best arrangements for them. If we were now proposing to enact such a law, this statement of it would probably be enough to ensure its rejection. What could be more irrational than to maintain that each generation shall be considered more competent to foresee the needs of the coming one than that one, when arrived, is to see them; and that the disposition of property shall never be brought abreast of the existing age, but shall always be subject to the views of the past age. Yet, such is the direct effect of our law of posthumous disposition; and according to my

experience the phenomena are much in accordance with the law. As the tree is, so is the fruit. The cold and numbing influence of the dead hand is constantly visible.

I am not going to discuss the more public side of this question, to which task indeed I am not equal. The law is both attacked and defended on grounds of general policy and of political economy.* Those I pass by now. Whether a curtailment of the power of settlement would tend to break up properties,† or, if it did so, what might be the political effect, I do not presume to say. Such inquiries seem to me of a very remote and conjectural character, even when conducted by competent persons. What I consider to be not conjectural, but proved by experience in all human affairs, is, that people are the best judges of their own concerns; or if they are not, that it is better for them, on moral grounds, that they should manage their own concerns for themselves; and that it cannot be wrong continually to claim this liberty for every generation of mortal men.

But there is another side of the question with which my professional experience has made me familiar, and this is the department to which the law directly applies, and in which it produces its immediate effect. The interior of every family of any opulence is affected by the law of posthumous disposition, and the effect of the great power allowed to settlers is very prejudicial. I am not speaking at random, but with many instances present to my mind, in saying that a strict settlement is apt to place every one concerned in a false and constrained position. Suppose that land is the subject of it. The father of the family, cut down to a tenancy for life, resents the restraint, disclaims responsibility for the inheritance, and declines to assist it by improving, or to spare it from charges by saving. If he has only daughters, the matter is worse. On his death, they and his widow will have to leave their home, of which some collateral, more or less distant, will take possession.

* Usually under the name of the law of primogeniture, a name inaccurate and misleading. The important law which people really wish to discuss may be called the law of perpetuity or of settlement, or, as I have usually called it here, of posthumous disposition.

† As far as my own small experience goes, I have found that strict settlements do not foster, but retard accumulation of land, a process which, I suspect, is due partly to moral causes, and chiefly to monetary ones, and not in any degree to the state of the law under consideration.

Why should things be made comfortable for him? If he has a son, that son is sure of his succession; he owes his property to his grandfather, whom he never saw, and feels independent of all obligations. If unable to make satisfactory arrangements with his father about money, he will raise it by post-obits. If there is no issue, the relations between the life-holder and his collateral successors are much the same. This is the case, supposing him to be a man who does not exceed his income. But supposing him to be extravagant, then is seen a most melancholy sight. A family with wealth enough to provide for their wants and give them some start in the world, but with it all placed out of their reach during the father's life; the income goes to his creditors; the children may grow up in a state of ignorance and destitution; he is trying how far, by wheedling trustees or by the astute exercise of legal powers, he can encroach on their portions; they are expecting money in the future, and making no adequate exertion in consequence. It is probable that many men would be restrained from squandering their fortunes, if it were not for the delusive idea that the capital is placed beyond their reach, and will be saved from a wreck. But be this so or not, it is better, far better, even for the children themselves, to say nothing of the public at large, that they should, as regards inherited property, stand or fall by their parents' acts, and that they should not undergo the excessive trials which beset every one who is poor now, but rich in expectancy. Strict settlements of money differ in some respects from those of land, but their effect on families is so alike that it is not worth while to pursue the differences here.

Of course, I am not saying that the effects just described are in fact the usual result of strict settlements. Men are constantly better than their laws; and family affection, prudence, self-respect, and a sense of right and justice are always operating, and in most cases with success, against the tendencies I have mentioned. All I say is, that these virtues would operate more freely and effectually if people were left with more freedom and more responsibility; that settlements have a tendency to blunt the sense of responsibility, by shackling freedom of action, and to impair the delicate interdependence of parent and child; that these tendencies come frequently into partial action, and not very infrequently into full-blown action. My belief therefore is, and has long been, that society at large would gain much, and lose nothing, if the

power of posthumous disposition were confined to persons living at the date of the disposition.*

There is now another school of opinion on the subject of Foundations to which I must advert. Of this school Mr. Lowe is the most prominent teacher. He, it seems, would hardly admit of any endowments at all, except perhaps in the shape of buildings, libraries, or such like things, producing no income.† To this I cannot assent. Mr. Lowe's late pamphlet insists on considerations of the greatest importance, perhaps of more importance than any other class of considerations. And if in any practical matter we lose sight of the maxims that we must offer to people the thing they want, and not the thing they don't want; that the users of an article are, in the long run (longer or shorter according to the simplicity of the article), the only available judges of its value; and that the exertions of the mass of mankind must be stimulated by their interest, we shall come to disaster. Moreover, his argument has the great merit—which ought not to be, though it is so singular—of being founded on experience, and affording solid grounds for assent or dissent. My reasons for dissenting from his conclusions are as follows.

In the first place, I think he has not borne in mind the cause of the failure of endowments. That failure is directly traceable to Founder-worship, to our slavish and liberal adherence to the directions of Founders, instead of operating on the funds by public authority, and adjusting them from time to time, as change of circumstance requires. Having gone on the foolish principle of allowing the Dead to govern the Living, we cannot be said yet to have tried the effect of endowments. We are at least bound to try whether there is not wisdom enough and strength enough among us to convert endowments to really useful public objects. And I, for one, do not see why this

* The strongest reasons to be urged against strict settlement apply with less force to ordinary marriage settlements; and there are reasons in their favour. I believe, however, that they are not found necessary in any country but this; and I cannot help thinking that they may hold a different position in this country when we have got rid of our barbarous laws relating to married women, and have adopted some more civilized regulations. Still, as a rule, they are dictated by motives of prudence, and not by love of power, and their propriety is to be discussed on considerations foreign to my present purpose.

† "Endowment or Free Trade, by the Right Hon. R. Lowe, M.P. Bush, 32, Charing-cross. See also an admirably-written criticism on Mr. Lowe's Pamphlet in *Macmillan's Magazine* for April, 1869.

should not be effectually done, if the nation becomes heartily in earnest about it.

Secondly, I think that Mr. Lowe has overrated both the ability and the will of people to provide themselves with those advantages (a sound middle-class education is the subject he discusses) which it is designed to give them by means of endowments. It may be that, in progress of time, they may become able and willing, as undoubtedly they are more so now than they were fifty years ago. But that happy time has not arrived yet, and a judicious use of endowments may tend to hasten its arrival.

Thirdly, I think he underrates the effect of a good school supported by endowment. He says that the parents are the ultimate judges of the work of schools, and he adds that "the whole and sole use of endowments is to influence, in other words to bribe, that judgment." That the parents must be judges in the long run I agree, but in such a matter as education the run may be a very long one, and the judgment of parents may be, not bribed, but legitimately influenced by the spectacle of a school unpopular for a time, but justifying itself by success. Now, the temporary unpopularity would ruin and destroy a private school, but the endowed school can bear up against it, and, if sound, will win its way. The private school may be sound, but must be showy. The endowed school can afford to dispense with show till such time as its principles have been fairly tried. And this power, valuable at all times, seems to me peculiarly valuable in a time of change, when the old staple subjects of instruction are very largely encroached on, and other subjects are claiming admission on equal terms, or asserting, as Professor Huxley asserts on behalf of physical science, a permanent right over all rivals.

Having now reviewed the principal doctrines and arguments on this subject, I am in a position to state the two simple principles which should be established with respect to Foundations.

The first is, that the public should not be compelled to take whatever is offered to it, but should here, as in other countries, have the right of considering whether that particular use which the Founder has fancied shall take effect, or whether the property shall be turned to some other public use, or given back to private uses. In short, that if the public is chosen as a legatee, the legacy shall be, as it ought to be, an unconditional one. Of course, the public would speak through some tribunal constituted for the purpose, which would probably

act on principles not rigidly defined, but not difficult to understand. A certain deference should be paid to the donor's wishes, so that they, or something akin to them, should have priority among claims of equal, or nearly equal, urgency, but they should never be allowed to interfere with the public welfare. As this principle would operate on the Future, I do not see why, if accepted, it should not be applied with great freedom.

Some who recognise the absurdity of compelling the nation to take whatever terms are offered to it, have thought that there should simply be a power of rejection, leaving the property to go as in case of intestacy. I think, however, that there would be much more likelihood of justice being done, or rather of reasonable expectations not being disappointed, if it were left in the hands of a public office, to dispose of the property in all cases. The same generous consideration which the Crown now exercises in certain cases of intestacy, would be exercised when, as in the cases of Jarvis and Tancred, a man had disappointed just expectations for the gratification of base passions.

The second principle is, that the grasp of the Dead Hand shall be shaken off absolutely and finally; in other words, that there shall always be a living and reasonable owner of property, to manage it according to the wants of mankind. This again must be a public tribunal, charged with the duty of adjusting to new objects all Foundations which have become pernicious or useless. This principle, though in my judgment the very salt and savour of Foundations, and absolutely essential to preserve them from corruption, would, as affecting the past, require to be applied with great reserve, delicacy and tenderness. Local interests and feelings must be carefully ascertained and consulted, and occasionally even efficiency postponed for the sake of conciliation. There would, however, be strong ground to hope that, if steadily pursued for a length of time, the living principle of using property so as to benefit mankind would with the assent of the great majority, prevail over the deadly superstition of blind obedience to the commands of the dead.

We are, indeed, told by way of objection to such proposals, that if people are to have their gifts interfered with by the public, they will not give to the public. To this I answer first, that it is a pure guess without proof or probability. In other countries, people are not deterred from giving to the public by the knowledge that when they

have given they cannot themselves remain owners of the gift. In this country, people do leave absolute legacies to private persons, though the legatee may divest himself of the property the next day, or use it in a way the testator would highly disapprove of. The objection assumes that the donors of property to public uses are the most suspicious, narrow, and unreasonable of men; that they will persist in thinking that they can foresee what is good for the Future better than their successors can see what is good for the Present; and that they cannot bear to be fairly forewarned that each generation will insist on using property for its own good. But if we are to guess on this subject, I prefer to guess on grounds which are at once more probable and more creditable to human nature. It is more likely that the spectacle of large charitable funds, creating no scandal, but thoroughly well administered by each generation for its own best interests, would induce noble and reasonable minds to give more freely than at present. But there is another answer, more important and conclusive. If people will not give freely and generously; if they will not really give; if they insist on only pretending to give, while all the while they are stipulating to remain owners themselves, then, say I, "Let their money perish with 'them!'" It is such false gifts as these which have created the scandals and the demoralizing character of so many of our charitable institutions, or at least have prevented their improvement. They are like the gifts of malignant spirits of which the old fairy tales tell us; they look like gold, but turn to something foul in the handling. They are fatal. Let us have no more of them. We have too many already.

Another objection touches on a subject on which very few can speak plainly without giving offence, and, though not intending any offence, it is unlikely that I should be among the happy few. It is asked, as though the question were unanswerable, whether a public tribunal shall interfere with Foundations for the support of opinions? The opinions for which Foundations are established are usually of a theological character, and it is thought that Foundations for this purpose are more valuable and sacred than others. Now, as to their being more valuable, I will not hesitate to say that Foundations attaching endowments to the holding and teaching of prescribed opinions are (*if they are to be unalterable*) the very worst kind of Foundations that can be conceived; for experience shows that the opinions to which men have attached property change and become extinct, (sooner or later

according to their depth and force) and then you have a direct premium on profession without belief. But that which tends to corrupt the noblest part of man, the very eye of the soul, his perception of truth, is as evil a thing as can be imagined. Suppose, for instance, that a large estate had been settled in the 16th century for maintaining the geocentric theory of the universe. It was believed implicitly; it was supposed to rest on the clearest testimony of revelation; to doubt it was impious. One or two in the pride of their wayward hearts had dared to express an opposite opinion. What more pious than to found a college for teaching this vital truth, which lay at the bottom of so many other beliefs about man's relations to his Maker? Suppose then that this had been done, and that now, when every child at a national school knows the contrary, solemn lectures were delivered to show that, in some sense or other, astronomical, metaphorical, or mystical, the sun travelled round the earth. This would be something like the Walloon sermon at Norwich, which nobody understood. But is any public authority to interfere with so degrading a mockery? Sir F. Palgrave would say, "No, you cannot interfere with the authority of the Founder." I venture to say, Yes you can, and you ought. As long as any man believes any opinion whatever, let him proclaim it without molestation from the house-tops. But to allow that property shall be devoted for ever to bribing people into teaching what they do not believe is monstrous.

I have put an hypothetical case; let me refer to a real one, which has been mentioned before.* It is that of a gift to propagate the sacred writings of Joanna Southcote. In that case, if the property had not luckily all vanished, we should now have a chapel or a lecture-room, with a paid preacher proclaiming aloud as true what neither he nor anyone else believed, and there would be no power of interference unless by special Act of Parliament. For the trust is to propagate the writings; the act is, as it should be, a lawful one; and as long as it is done (whether by preaching or printing does not much signify) the trust is duly performed. But that there should be no legal means of putting an end to such a trust is a great defect of our law.

Now, the number of Foundations made to maintain theological opinions in this country is enormous. Some of the trust deeds are very minute as to the tenets to be believed. I quote

* Lecture, pp. 4, 5.

from one which has been quite recently in my hands. Those who benefit by this Foundation are to believe and teach:—

“The one only living and true God, the Creator and Upholder of all things; the Scriptures of the Old and New Testament as the Word of God and the only rule of faith and practice; the doctrine of the Trinity, including the Deity and distinct personality of the Father, of the Son, and of the Holy Spirit; the doctrine of original sin, and the entire depravity of human nature; eternal and personal election: particular redemption; atonement for sin by the death and sacrifice of Jesus Christ; justification by his imputed righteousness through faith; the necessity of regeneration and sanctification of the Holy Spirit; of repentance towards God and faith in Jesus Christ in order to salvation, and the final perseverance of the saints. Also believing that baptism by immersion only and the Lord’s Supper are to be administered to such alone who profess faith in Christ, and whose conduct is consistent with such profession; that the law of God is a rule of moral conduct to believers; that there will be a resurrection of the dead, both of the just and the unjust, and a day of final judgment, and that the wicked ‘shall go away into everlasting punishment but the righteous into life eternal.’”

This deed was framed in the year 1836. Here are contained a great number of abstruse doctrines, as to which it is quite certain that the people interested in the Foundation will change their minds. I suspect I could point out one as to which they have changed their minds already. Such changes have frequently occurred, and have led to severe litigation.

A rough though wise method of stopping a number of law-suits was devised in the Dissenters’ Chapels Act, which secured the possession of congregations who had drifted away from the original tenets of the Founders, and whose expulsion was sought by orthodox representatives of those Founders. But it seems to me that it would be more wise and statesman-like to engraft into the law powers to adjust these deeds from time to time, according to the true needs and beliefs of the community among whom the Foundation was intended to work, and had always been working, so that if they came, saying, “Here is a doctrine which has dropped out of our real creed; we say nothing about it; but we should feel easier if relieved from any legal obligation to hold and teach it,” relief of that sort should be granted to them.

Where a Foundation is acknowledged to be national, it is agreed that, on adequate cause being shown, the creeds and formularies shall be altered. Establishments co-extensive with the nation are indeed such vast and important machines

that it is right that no alteration should be effected in them by any power short of the direct action of Parliament. But that Parliament may make the alteration is doubted by no lawyer or statesman, and by not many ecclesiastics. The right of Parliament (as distinct from its power) to vary the terms of private theological Foundation would be seriously disputed. The Church of England has a code of doctrine much more extensive than the private one I quoted just now. But at this moment there is a strong and growing desire for revision of the Liturgy and Creeds, and I need not refer to their effective revision at former periods of our history.

I, therefore, can see no reason why Foundations for the maintenance of opinions should not be placed on precisely the same footing as other Foundations.* To the truth or falsehood of the opinions themselves no human tribunal ought to have anything to say. That must be left in the province of argument and persuasion. But a human tribunal can easily ascertain whether events have occurred which demand an alteration. These Foundations are subject to precisely the same incidents as others. The community among which they work may disappear altogether, or may cease to have any regard for the opinions, and then the Foundation is useless. It may be impossible to find even one teacher who really believes them, and then the Foundation is corrupting and immoral. In all such cases there should be, as in the case of almshouses, schools, or doles, a power of adjustment to the changing circumstances of the day.

* It is an opinion which I have not discussed here, as not deeming it practical enough for the present occasion; but it is well worth considering whether the difficulties attending Foundations for opinions are not such as make it more expedient to prohibit them altogether, except national ones so constituted as to be kept constantly in sympathy with the nation at large, and that they should dispense with doctrinal tests as far as possible. I have lately been told by a very eminent member of a dissenting body that, in his opinion, the attachment of property to opinions makes great mischief. It is remarkable that Ignatius Loyola should have been highly apprehensive of the effect of endowments. He forbade his followers not only to solicit gifts, but even to sue for them if made by a testator and refused by his executor. His object, says a follower of his, was that he wanted to keep the cleverest men in the body, and feared that endowments might be the means of depriving it of its brightest members. He had doubtless pondered over the greatest contest that ever took place between men bound by endowments to a set of opinions and others who were unfettered, and knew on which side the energy was, and why. See the evidence of Mr. Trappes, given to the Mortmain Committee of 1844.

And now I have performed the task which I undertook, viz., to point out the objects at which we ought to aim. While stating my reasons fully, and illustrating them by examples, I have dwelt only on general principles; I have only exhibited in another phase my maxim that Property is not the Property of the Dead, but of the Living. In my opinion the law should be altered to admit this maxim. Into the details of any such alteration I have not attempted to enter. Probably meetings of this kind are at all times better suited to ventilate and discuss large general principles than the actual machinery by which they are to operate; and certainly at this opening stage of the question, when I find my general principles simply ignored by the bulk of men, and denied by the great thinker whom I have endeavoured to controvert, it would be mere waste of time to enter upon the intricacies of a legal reform. But things are not well with us in this matter of Foundations. For some reason or other, they will not work. The machinery is attended with enormous friction in the shape of labour and cost, and then turns out bad work instead of good. It is like the princess in the fairy-tale on whom a curse lay, so that when she tried to speak there came forth only toads and asps. Go into any town where Charities abound, and ask there what effect they have. You will be told that they do mischief; and the chances are that your informant will add that it is a pity they are so abused. But let us not lay that flattering unction to our souls. Abuse is not what we have to complain of; it is the system, or rather the anarchy and want of system which we permit, and which is rotten to the core. We have suffered ourselves to fall in bondage to the speechless dead. The time was

“That when the brains were out, the man would die,
And so an end: but now they rise again,
And push us from our stools.”

We must have recourse to simpler and healthier principles. Reflection and experience have brought my mind to the conclusion which common-sense would seem to dictate, that living men should be allowed to dispose of the fruits of the earth for their own good, according to the best of their own judgment. This is so simple that it seems like a truism. It is so simple that we might expect it to be accepted as soon as stated, if we did not know how hard it is to gain acceptance for any truth that conflicts with established custom. Other simple truths have only obtained recognition through struggles well-nigh

desperate ; they have encountered, in fiercer times than these, oppression and persecution ; they have been called wicked, impious, revolutionary, atheistical ; and if there be any other term of obloquy it has been lavished on them. Freedom of person, freedom of trade, freedom of speech, freedom of thought, have all gone through stages of adversity more or less cruel. But they have passed on to victory, and are now taken as the plainest axioms of common sense, and as the cardinal points of human prosperity and happiness. I will make bold to augur the same success for Freedom of Property ; with what amount of struggle remains to be seen.



